



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

August 4, 2016

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
-------------------------------	------------------	------------------------------------

MINUTES

1. Consider the minutes of the July 14, 2016 meeting of the Board of Adjustment.

REQUESTS

2. **Variance from Section 14-04-03(7) of the City Code of Ordinances (Front Yard), Section 14-04-03(8) of the City Code of Ordinances (Side Yard) and Section 14-03-09(3) of the City Code of Ordinances (Nonconforming uses) – Lots 3-5, Block 87, McKenzie and Coffins Addition (1024 North 2nd Street) | VAR2016-014.**

Owner / Applicant: James Papacek

Board Action: ☐ approve ☐ continue ☐ table ☐ deny

ADJOURNMENT

3. **Adjournment.** The next regular meeting date is scheduled for September 1, 2016





STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

Agenda Item # 2

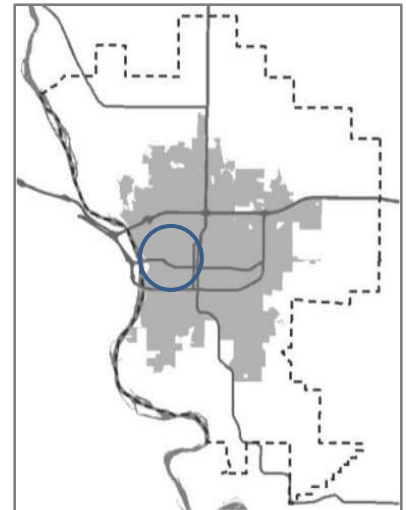
August 4, 2016

Application for: Variance

TRAKiT Project ID: VAR2016-014

Project Summary

Title:	Lots 3-5, Block 87, McKenzie and Coffins Addition (1024 North 2 nd Street)
Status:	Board of Adjustment
Owner(s):	James Papacek
Project Contact:	James Papacek
Location:	In central Bismarck, between West Boulevard Avenue and West Avenue E, along the west side of North 2 nd Street.
Request:	Variance from Sections 14-04-03(7) of the City Code of Ordinances (Front Yard), Section 14-04-03(8) of the City Code of Ordinances (Side Yard) and Section 14-03-09(3) of the City Code of Ordinances (Nonconforming uses).



Staff Analysis

The applicant is requesting variances to reduce the required front yard setback along the east side of his property from twenty-five (25) feet to fifteen (15) feet and to reduce the required width of the side yards from fifteen (15) feet to eleven (11) feet in order to construct a 23'x47' addition to the existing single-family dwelling along the south side of the property. The proposed addition would be located seven (7) feet from the side property line located along the south side of the property and fifteen (15) feet from the front property line located along the east side of the property adjacent to North 2nd Street.

The existing single-family dwelling was constructed in 1941 approximately four (4) feet from the side yard located along the north side of the property and fifteen (15) feet from the front yard located along the east side of the property adjacent to North 2nd Street. It appears that the building was constructed according to zoning regulations pertaining to building setbacks at that time.



(1024 N 2nd Street)

As the existing single-family dwelling is set back four (4) feet from the side property line, not six (6) feet as is now required, it is considered to be nonconforming.

The requirements for building setbacks outlined in the zoning ordinance have changed since the single-family dwelling was constructed. In particular, the front yard setback is now twenty-five (25) for all new construction and additions and the side yard setbacks are calculated as twenty percent (20%) of the average width of the lot, with no side yard being less than six

(continued)

(6) feet. Twenty percent (20%) of the average width of this particular lot is fifteen (15) feet, since the existing single-family dwelling is located approximately four (4) feet from the side property line, the remaining side yard setback along the south side of the property is required to be eleven (11) feet.

Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return."

Section 14-04-03(7) of the City Code of Ordinances (Front Yard) states, "Each lot shall have a front yard not less than twenty-five (25) feet in depth." According to the site plan submitted with the application the proposed addition would be set back fifteen (15) feet from the front property line located along the east side of the property adjacent to North Second Street.

Section 14-04-03(8) of the City Code of Ordinances (Side Yards) states, "Each lot shall have two (2) side yards, one on each side of the principal building. The sum of the widths of the two (2) side yards shall not be less than twenty (20) percent of the average width of the lot, except in cases where the ratio between the front lot width and the rear lot width is three (3) or greater. On any lot having an average width of sixty (60) feet or less, each side yard shall not be less than ten (10) percent of the average width of the lot, and in no case shall a side yard be less than five (5) feet in width. On any lot having an average width greater than sixty (60) feet, neither side yard shall be less than six (6) feet in width. On any lot where the ratio between the front lot width and the rear lot width is three (3) or greater, the sum of the widths of the two (2) side yards need not be greater than sixteen (16) feet with neither side yard being less than eight (8) feet. No building on a corner lot shall have a side yard on the side street less than twenty-five (25) feet in width. Side yard measurements are to be taken at right angles to the building at the closest points to a property line." Twenty percent (20%) of the average width of the lot is fifteen (15) feet. As the existing single family dwelling is set back four (4) feet from the side property line along the north side of the property, the remaining side yard setback measured from the

south property line must be eleven (11) feet."

According to the site plan submitted with the application the proposed side yard along the south side of the property would be set back seven (7) feet from the property line.

Section 14-03-09(3) of the City Code of Ordinances (Nonconforming Uses) states, "Alterations may be made to a nonconforming principal residential structure or any principal building in which there is a nonconforming residential use when the alteration will improve the livability thereof, provided it will not increase the number of dwelling units or the outside dimensions of the building." According to the site plan submitted with the application, the outside dimensions of the building would be increased by 1,081 square feet or 23' x 47'.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within R5 - Residential zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Staff Recommendation

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Site plan
3. Written Statement of Hardship

(continued)

Staff report prepared by: Jenny Wollmuth, CFM, Planner
701-355-1845 | jwollmuth@bismarcknd.gov

Proposed Variance

Lots 3-5, Block 87, Mckenzie & Coffins Addition



July 18, 2016 (hlb)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

0 165 330 660 Feet



**1024 North 2nd Street (Side Yard Setback)
Lots 3-5, Block 87, McKenzie and Coffins Addition**



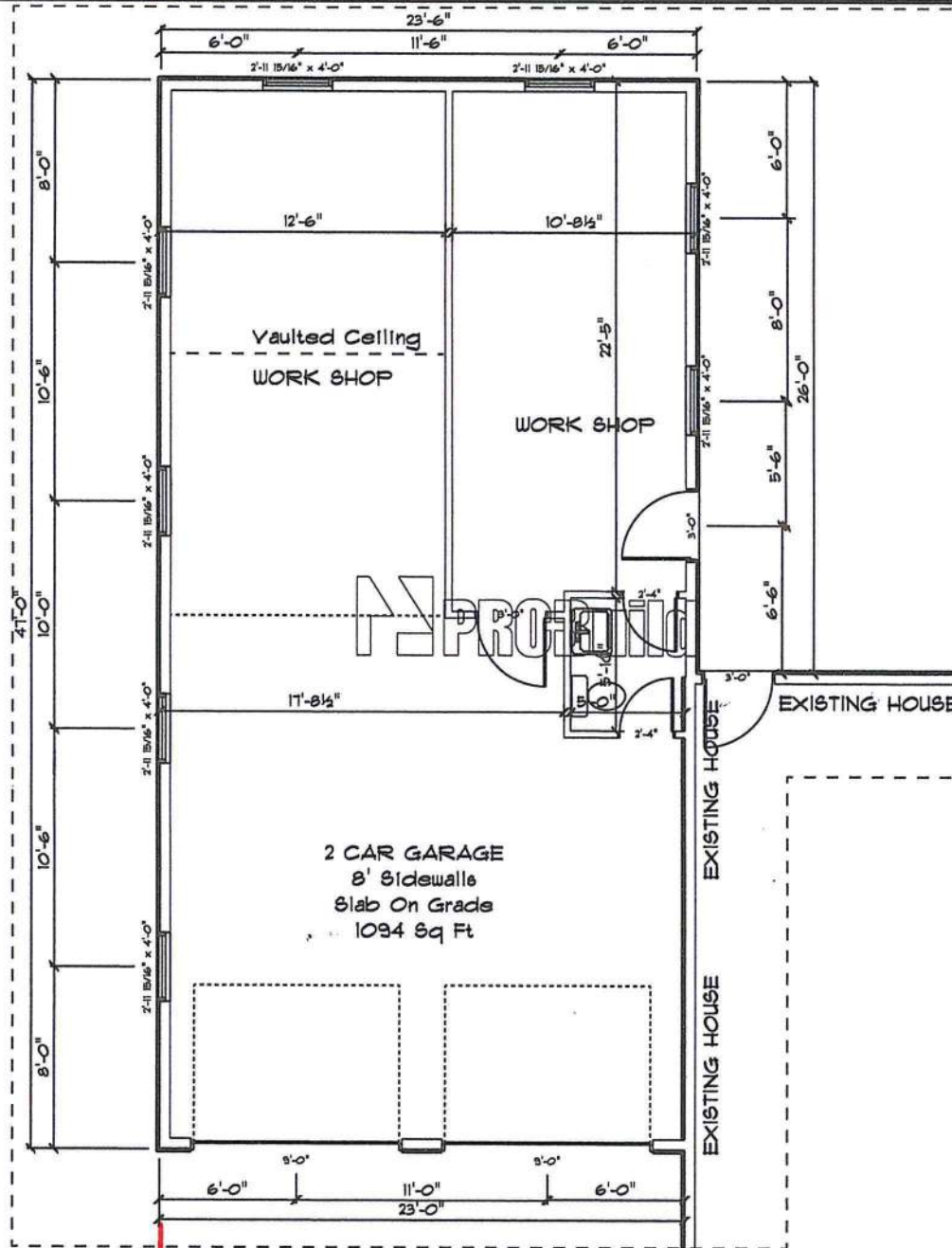
Date: 7/25/2016

0 15 30 60 90 120
Feet

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

N

Docr



← 7' → to property line

← 4' →
to Property
line

PROBUILD

30 35TH AVE.
P.O. BOX 33
MANDAN, ND 58504
PHONE: 645-5561
FAX: 645-5346

NOTE: VERIFY ALL DIMENSIONS

ALTHOUGH EVERY EFFORT HAS BEEN MADE IN PREPARING THESE PLANS AND CHECKING THEM FOR ACCURACY, THE CONTRACTOR MUST CHECK ALL DETAILS AND DIMENSIONS AND BE RESPONSIBLE FOR THE DATE FOR ALL GOVERNING CODES AND BUILDING PRACTICES. THESE DRAWINGS CONFORM TO GENERALLY ACCEPTED BUILDING PRACTICES, HOWEVER, STATE AND LOCAL CODES VARY WIDELY. THE DESIGNER, AND "BSC" SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, LOCATIONS, REQUIREMENTS AND CLEARANCE. CONTRACTOR SHALL VERIFY ALL FLOOR AND ROOF BEARINGS. LOCATIONS, CONTRACTOR SHALL VERIFY ALL BEAM AND HEADER SIZES FOR CODE COMPLIANCE.

== COPYRIGHT ==
ALL RIGHTS RESERVED

PLAN # 16-033		PRINT DATE: Monday, June 27, 2016 PRINT TIME: 10:15 AM	
CONTRACTOR: Big River Builders		SCALE: 1/8"=1'-0"	
CUSTOMER: Papacek		DRAWN BY: Jeremy Behler	

Bismarck

CITY OF BISMARCK/ETA APPLICATION FOR APPROVAL OF A VARIANCE WRITTEN STATEMENT

RECEIVED
MAY 15 2016

1. Property Address or Legal Description: 1024 - 2 st North
2. Location of Property: ☒ City of Bismarck ☐ Extraterritorial Area (ETA)
3. Type of Variance Requested: Side yard set back
4. Applicable Zoning Ordinance Chapter/Section: 14-04-03 (8)
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features - such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition - that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

The yard has a steep grade. The existing garage is too narrow to allow modern cars creating problems getting in and out. Both the steep grade & the old narrow garage creates a hardship. I have two replaced knees. With an aid by a variance would make a 72 year old & a 70 year old capable of using their cars & living in this home longer.

6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

It is a very tight situation with limited variations in correcting the problem. It is designed in such a manner that a restroom can be implemented making travel not such a hardship. It would allow storage area for implements for taking care of the property.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

The variance is the minimal distance for two vehicles to park side by side. The garage door is the smallest to accommodate two vehicles. The distance to the house is reduced & sheltered to protect myself & my partner in bad weather.

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
July 14, 2016**

The Bismarck Board of Adjustment met on July 14, 2016 at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Marback presided.

Members present were Jennifer Clark, Chris Seifert, Ken Hoff, Rick Wohl and Michael Marback.

Member absent was Ken Heier.

Staff members present were Brady Blaskowski – Building Official, Jenny Wollmuth – Planner, Jason Hammes – Assistant City Attorney and Hilary Balzum – Community Development Administrative Assistant.

Chairman Marback introduced Rick Wohl as the new member of the Board of Adjustment.

MINUTES:

Chairman Marback called for approval of the minutes of the June 2, 2016 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Hoff and seconded by Mr. Seifert to approve the minutes of the June 2, 2016 meeting as presented. With Board Members Clark, Hoff, Marback, Seifert and Wohl voting in favor, the minutes were approved.

VARIANCES FROM SECTION 14-04-01(6) OF THE CITY CODE OF ORDINANCES (RR-RESIDENTIAL)(REAR YARD) – LOT 4, BLOCK 1, PRAIRIE VIEW SUBDIVISION (5313 SOUTHVIEW LANE)

Chairman Marback stated the applicant, Greg Hartze, is requesting a variance to reduce the required rear yard setback for a property located within the RR – Residential zoning district from fifty (50) feet to thirty (30) feet in order to construct an accessory building.

Ms. Wollmuth gave an overview of the request, including the following findings:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR-Residential zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Ms. Clark asked if there are issues with flooding on this property. Ms. Wollmuth said it is in the 500-year floodplain so elevation requirements do not apply.

Mr. Hoff asked how long the owner has lived there. Mr. Hartze said they have lived there since September 2003 and want to build a 28 foot by 32 foot accessory building. He said the lot is sloped so he would prefer to do one-foot footings with approximately four to six inches of fill dirt so that water draining from the north goes around the outside of the building. He said the driveway would be 10 feet long across the entire front of the accessory building and he would have to remove some established trees if the variance is not granted.

Mr. Hoff asked what the maximum square footage allowed on the lot could be. Ms. Wollmuth said per the zoning ordinance, they could go up to 2,400 square feet in accessory buildings on this lot.

Mr. Hoff said he would like to remind the owner that the accessory building cannot be used for commercial purposes, such as storage for a landscaping company.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the required rear yard setback for a property located within the RR – Residential zoning district from fifty (50) feet to thirty (30) feet in order to construct an accessory building on Lot 4, Block 1, Prairie View Subdivision (5313 Southview Lane), based on the slope of the property and the need for access to the accessory building. The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-07(7) OF THE CITY CODE OF ORDINANCES (RM-RESIDENTIAL)(FRONT YARD) – LOT 12, LESS THE EAST 9 FEET FOR ALLEY, BLOCK 42, NORTHERN PACIFIC 2ND ADDITION (623 NORTH 6TH STREET)

Chairman Marback stated the applicant, James Bohe, is requesting a variance to reduce the front yard setback for a property located in the RM – Residential zoning district from twenty-five (25) feet to twenty (20) feet in order to construct an attached garage along the east side of the existing home.

Ms. Wollmuth gave an overview of the request, including the following findings:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RM-Residential zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked how large the attached garage is going to be. Ms. Wollmuth said they cannot exceed their maximum lot coverage and the plan is for it to be three stalls. She said the rear yard setback requirement can also be added to the variance request at this time if that is desired. Secretary's Note: A variance from Section 14-04-07(9) of the City Code of Ordinances (RM-Residential)(Rear Yard) to reduce the required rear yard setback from twenty (20) feet to four (4) feet will also be included in this request.

Mr. Hoff asked how this will work with the garage then being so close to the alley. Ms. Wollmuth said access would be off of East Avenue C and the City Engineering Department would be the ones to approve the appropriate curb cuts and skirting along the alley.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

MOTION: A motion was made by Ms. Clark to approve the variance to reduce the front yard setback for a property located in the RM – Residential zoning district from twenty-five (25) feet to twenty (20) feet and to reduce the rear yard setback for a property located in the RM-Residential zoning district from twenty (20) feet to four (4) feet in order to construct an attached garage along the east side of the existing home on the Lot 12, less the East 9 feet for alley, Block 42, Northern Pacific 2nd Addition (623 North 6th Street), based on the age of the property and the addition of an attached garage improving the appearance of the property. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

VARIANCE FROM SECTION 14-04-03(8) OF THE CITY CODE OF ORDINANCES (R5-RESIDENTIAL)(SIDE YARD) – LOT 5, BLOCK 2, GRANDVIEW HEIGHTS (1929 NORTH GRANDVIEW LANE)

Ms. Wollmuth explained that she received a request from the applicant today for this variance application to be withdrawn. She said because adjacent property owners were notified of the public hearing, the public hearing does still need to be opened.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

Written comments in opposition to this request are attached as Exhibit A.

VARIANCE FROM A PLATTED FRONT YARD SETBACK LINE – LOT 13, BLOCK 4, HIGHLAND ACRES 2ND ADDITION (1136 NORTH PARKVIEW DRIVE)

Chairman Marback stated the applicant, Troy Olson, is requesting a variance to reduce the front yard setback from a platted setback line as indicated on the subdivision plat of Highland Acres 2nd Addition from thirty (30) feet to twenty-six (26) feet in order to construct a single-family dwelling.

Ms. Wollmuth gave an overview of the request, including the following findings:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this neighborhood.
2. The hardship is not caused by the provisions of the Zoning Ordinance.

3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance or the platted set back line.

Ms. Wollmuth said staff recommends reviewing the findings in the staff report and modifying them as necessary to support the decision of the Board.

Chairman Marback asked if it is only the covered porch that would encroach into the setback. Ms. Wollmuth said that is correct, that it would encroach by four feet and that the foundation of the proposed single family dwelling will be set back the required 30 feet, as indicated on the plat of Highland Acres 2nd Addition.

Mr. Olson said the variance is only needed because it is a covered rather than uncovered porch.

Ms. Clark asked if the porch or house can be moved back on the property at all. Mr. Olson said the back portion of the lot drops off considerably so he is trying to avoid moving the house back any further.

Chairman Marback opened the public hearing.

There being no comments, Chairman Marback closed the public hearing.

Additional comments on this request are attached as Exhibits B and C.

Ms. Clark said the request does not seem to have changed much from the first time Mr. Olson asked for a variance on this property. She said there is a comment from a neighbor regarding the Highland Acres covenants but it is not the authority of this board to control those. Ms. Clark then asked if a future owner could be allowed to enclose the porch completely for addition living space.

Ms. Wollmuth said a condition or restriction can be placed on the motion that future owners not be allowed to do that, but it would be very difficult to completely enclose it as the proposed porch will be built on footings, not a perimeter foundation.

Mr. Blaskowski said a request or permit to enclose the porch would not necessarily be denied, but if the deck were uncovered then a variance would not be needed at all right now. He said an owner could screen it in and it would not be considered living space.

Mr. Wohl said it appears the rest of the neighborhood has been held to the 30-foot setback requirement and asked if there are any that are setback closer. Mr. Blaskowski said he has not seen any on file but some do appear to be built closer than 30 feet, specifically on corner lots.

MOTION: A motion was made by Mr. Seifert to reduce the front yard setback from a platted setback line as indicated on the subdivision plat of Highland Acres 2nd Addition from thirty (30) feet to twenty-six (26) feet in order to construct a single-family dwelling on Lot 13, Block 4, Highland Acres 2nd Addition (1136 North Parkview Drive), with the following condition: 1. The proposed covered front porch may not be enclosed to create additional living space. based on the unique topography of the property and all other efforts having been made to reduce the variance as much as possible. The motion was seconded by Mr. Hoff and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion, the motion was approved and the variance was granted.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business, Chairman Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:28 p.m. to meet again on August 4, 2016.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chairman